with reseller interconnection requests and facilitate the competition it will bring by allowing resellers to introduce switch-based resale by advice letter in accordance with Decs. 91-10-041 and 93-05-010.

1. Unbundling Does Not Violate The Communications Act of 1934, As Amended on June 1, 1993.

In its Emergency Request, LA Cellular claims that Ordering Paragraphs 3 and 4 of Dec. 94-08-022, which require the unbundling of air time and access charges, among others, violates 47 U.S.C. Section 332(c)(3)(B) of the Communications Act of 1934, as amended because such unbundling was not in effect on June 1, 1993. This argument is meritless and was already raised in LA Cellular's Application for Rehearing. There, LA Cellular went so far as to contend that the Commission is precluded from making any changes in cellular regulations as they existed on June 1, 1993 except to "relax" them. See e.g. LA Cellular Rehearing Application at 12.

LA Cellular's arguments cannot be squared with the plain language of Section 332(c)(3)(B) or its legislative history. Section 332(c)(3)(B) states, in pertinent part, as follows:

> If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the [Federal Communications] Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. . . .

47 U.S.C. §332(c)(3)(B) (emphasis added). Nothing in the foregoing statutory provision precludes a State from making any changes in particular regulations that were in place as of

June 1, 1993. Quite the contrary, the language plainly refers to the State's regulatory "authority" and "regulation," rather than to particular regulations. Thus, the paragraph provides that a State should petition the FCC to request authorization "to continue exercising authority over such [commercial mobile service] rates" -- not to continue the validity of particular regulations. Similarly, the next sentence of the provision provides that such "regulation" shall remain in place if the State files such a petition! If Congress intended to allow the continued validity only of certain regulations, as LA Cellular and other cellular carriers assert, the paragraph would have referred to existing regulations; It does not[1].

Nonetheless, it should be noted that the Interim Decision's requirement to unbundle service was adopted in Dec. 92-10-026 (and left intact by the rehearing Decision 93-05-069) prior to enactment of the 1993 changes in the Communications Act of 1934. Fdg. of

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[1] Senator Inouye, Chairman of the Senate Commerce Committee's Communications Subcommittee and the principal draftsman of S. 335, when he discussed this provision on the Senator floor on June 24, 1993, explained the June 1, 1993 cut-off date as follows:

> At the Executive Session at which this Committee ordered this budget reconciliation legislation to be reported, the Committee agreed to an amendment offered by Senator BRYAN to give added consideration to States that currently regulate cellular service.
>
> . . .
>
> Under subparagraph (C) as added by the amendment, a state that has in effect, on June 1, 1993, regulation concerning the rates for any commercial mobile service may petition the FCC to continue exercising authority over such rates within 1 year after the date of enactment of this legislation. . .

139 Congressional Record S7949 (Daily Ed. June 24, 1993) (emphasis added). The Conference Committee then basically accepted an amendment offered by Senator Bryan and the Conference Agreement merged subparagraph (C) of S. 335 into the new subparagraph (B) and explained that "State authority to regulate is 'grandfathered' only to the extent that it regulates commercial mobile services 'offered in such State on such date.'" Conference Report, supra, at 493 (emphasis added). No reference was made to freezing particular regulations.

Fact 46 of Dec. 92-10-026 explicitly stated "wholesale services being sold by the facilities-based carriers can be unbundled." Mimeo at 56. "We therefore unbundle into wholesale rate elements only those functions that cannot be provided by competitors that is the portion of the network between the mobile unit and the switch, and certain switching functions." Ibid. at 39. Dec. 93-05-069 left this unchanged. See Ordering Paragraph 3, Mimeo at 11. Thus, the Commission's unbundling of existing market-based tariffed rates as identified in Ordering Paragraphs 3 and 4 is in no way a change of its regulation and is in keeping with all of its decisions rendered prior to the change in federal law.[2]

2. Resellers Need Not Petition To Amend Their Certificates To Become Switch-Based

LA Cellular does persuasively claim that requiring resellers to amend their existing certificates to become switch-based is "entry" regulation that is precluded by revised Section 332(c)(3)(A) of the Communications Act of 1934, as amended. As the Commission is well aware, it no longer has jurisdiction over entry requirements for commercial mobile service providers, but does retain jurisdiction over terms and conditions as well as rate regulation as allowed by FCC action on the Commission's August 8, 1994 petition. Thus, to remedy this anomaly in Dec. 94-08-022, the Commission should merely require of certificated switchless cellular resellers what it does of certificated switchless long distance resellers, that they file advice letters to become switch-based under the requirements of

[2] LA Cellular's alleged "common sense" argument that the Commission could only lessen regulation rather than change existing policy has no substantive basis in the statute. The statute plainly says "authority over rates" and nothing the Commission does, whether perceived as more or less onerous in the subjective eyes of the beholder changes its state statutory responsibilities in formulating any rate regulation.

Dec. 91-10-041 and 93-05-010.[3] This will speed the entry of switch-based resellers and the competition they will bring.

3. LA Cellular's Claims That The Decision Will Require Public Disclosure of Trade Secret and Proprietary Information Are False

As a way to delay and frustrate the interconnection of reseller switches, LA Cellular, without record support, alleges that interconnection will require duopoly carriers to divulge proprietary and trade secret information, thereby somehow compromising their operations and financial success.

LA Cellular's claims are a vast distortion. Attached hereto as Exhibits 1 and 2, respectively are October 7, 1994 interconnection requests to LA Cellular by certificated resellers, CSI and Comtech. Neither request requires the disclosure of proprietary and trade secret information allegedly so zealously guarded by LA Cellular. Attachments 3 and 4, respectively, are exchanges of correspondence between LA Cellular and CSI, and LA Cellular and Comtech, wherein LA Cellular initially agrees to share certain of its alleged confidential information with engineers for CSI and Comtech, via nondisclosure agreements, to the extent that it is necessary to assure mutually compatible engineering and

[3] In passing, LA Cellular also claims, without record support, that 40% or more of duopoly carrier charges are access charges for which the Interim Decision would provide credits to switch-based resellers. See Ordering Paragraph 4 of Interim Decision. LA Cellular fails to mention that the Interim Decision is fully cognizant of the access charges for which a switch-based reseller would receive credit because the Interim Decision specifically requires that "Instead, switch-based resellers would pay for the direct costs of interconnection of their switches to the cellular MTSOs and maintain their own connections to the local exchange carrier." Id. at 81. Those charges for reseller switch interconnection to both the LEC Central Office (CO) and the cellular Mobile Telephone Switching Office (MTSO) can and will be purchased under the LEC wireless tariff (or pursuant to agreement) as set forth in Dec. 94-08-085. Any port charges where the trunk would terminate at the MTSO and CO would also be the responsibility of the switch-based reseller.

design. As the correspondence further indicates, LA Cellular also initially agreed to execute identical nondisclosure agreements to protect any Reseller confidential and proprietary information. See Attachments 3 and 4.

Despite the cooperation extended by both CSI and Comtech, including executing LA Cellular's proposed nondisclosure agreements without change, LA Cellular did not do the same. Rather, on September 26, 1994, LA Cellular terminated any alleged cooperation with these Resellers not based on LA Cellular's falsely adopted theory of trade secret concerns. Rather, as Attachments 3 & 4 indicate, this rejection was based on ill-advised theories that the mere filing of LA Cellular's application for rehearing in this proceeding stayed the effectiveness of this Decision and that federal preemption could occur. See Attachments 5 & 6 hereto, identical letters from Erich E. Everbach, General Counsel to LA Cellular, to CSI and Comtech dated September 26, 1994 indicating LA Cellular's stance of noncooperation.

Thus, LA Cellular's basis for this "emergency" pleading is nothing more than a smokescreen to disguise its failure to cooperate with an effective Commission Decision. Moreover, its misguided attempts to claim federal preemption are a rehash of its application for rehearing and, as discussed below in Section 4, are meritless. Finally, it should be noted that at least four resellers have made bonafide interconnection requests of the duopoly carriers in reliance on Dec. 94-08-022. See Attachment 7, Nationwide Cellular request to AirTouch Communication; Attachment 8, Nova Cellular West, Inc. d/b/a San Diego Cellular Communications interconnection requests to AirTouch and US WEST, respectively; Attachment 9, CSI interconnection requests to Bay Area Cellular Telephone Company ("BACTC"), GTE Mobilnet, US WEST, AirTouch and LASMSA Limited

Partnership; Attachment 10 Comtech interconnection requests to BACTC, GTE Mobilnet and LASMSA. Those requests must be honored and enforced by the Commission, if its policy to promote wholesale and retail competition is to be realized.

4. The Commission's Unbundling and Interconnection Order For Switch-Based Resellers is Not Preempted, Nor Does It Infringe Federal Law

LA Cellular also contends, as it did in its Rehearing Application, that the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 152(a), preempts the Commission from authorizing reseller interconnection with the cellular duopolists' facilities. More specifically, LA Cellular asserts that (1) the Act preempts the Commission's interconnection order because resellers can use such interconnection for the transmission of interstate as well as intrastate calls and the Commission's action necessarily involves national arrangements such as roaming which makes them preemptible; (2) the Commission's order is inappropriate because the FCC may possibly preempt the exercise of state jurisdiction over interconnection for cellular resellers, and (3) the Commission failed to ensure that its plan for reseller purchase of NXX codes is consistent with out of state NXX Code use.

LA Cellular's arguments have no merit whatsoever. Indeed, it is noteworthy that LA Cellular has failed to cite a single statutory provision, FCC policy statement, or judicial decision which expressly preempts the Commission from authorizing cellular resellers to obtain (1) interconnection to the cellular carriers' facilities and (2) the use of the necessary NXX codes to utilize that interconnection efficiently. Review of each of these assertions demonstrates their meritless nature.

A. There Is No Preemption Through Interstate Communications

LA Cellular correctly observes that the reseller interconnection authorized by the Commission can be used for both interstate and intrastate communications. However, that obvious fact does not mean that the Commission's order beyond its authority and preempted by federal law.

Many communications facilities are utilized for both interstate and intrastate communications. Landline telephone networks are but one example. Cellular carriers' facilities are yet another. The use of facilities for both interstate and intrastate communications does not, by itself, preclude the states from exercising regulatory authority over the communications facilities or services. Such preemption can occur only if the State's exercise of such authority will "negate" existing federal policy or regulation. See e.g., Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n.4 (1986) (the FCC could not preempt state depreciation schedules, since there was no showing that such state activity interfered with FCC regulation); National Association of Regulatory Utility Commissioners v. FCC, 880 F.2d 422, 429 (D.C. Cir. 1989) ("the only limit that the Supreme Court has recognized on the state's authority over intrastate telephone service occurs when the state's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication").

The Commission's authorization of interconnection rights for resellers will not negate any existing federal law, policy or regulation. LA Cellular's failure to identify any such statutory provision, policy or regulation is particularly noteworthy. In the absence of any conflicting statutory provision, FCC policy or FCC regulation, the states are free to exercise jurisdiction over intrastate communications, even if such exercise also encompasses or otherwise affects interstate communications. See Cellular Communication Systems, 89

FCC 2d 58, 94 (1982) (subsequent history omitted) (FCC preemption over certain aspects of cellular service does not preclude "the states' interest in continuing their complementary role in the regulation of cellular service"). This holds true for roaming as well because reseller switch interconnection does not disturb any existing roaming arrangements which remain in place unchanged by such interconnection.

B. The FCC Plan for NXX Codes Allows Any Common Carrier To Utilize Them

Although NXX codes are utilized for both intrastate and interstate communications, the FCC deemed it necessary to ensure that cellular carriers had adequate access to the NXX codes in order to provide the cellular service which the FCC had authorized in 1981. Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2911 (1987). Nothing in the FCC's decision, or in any other FCC action, prohibits a state agency from authorizing access to NXX codes to facilitate service. Conversely, a reseller's NXX will be recognized outside of California in the identical fashion as the duopoly carrier's NXX is so recognized because switch-based resellers would utilize NXX codes in precisely the same manner as cellular carriers.

C. The FCC Has Not Preempted State Interconnection Arrangements

LA Cellular also contends the FCC's July 1, 1994 Notice of Proposed Rulemaking and Notice of Inquiry In The Matter of Equal Access and Interconnection Obligations Pertaining To Commercial Mobile Radio Services, ("Equal Access Inquiry") CC Docket No. 94-54 Rm-8012 and its Mobile Services Order may preempt this Commission on the issue of reseller switch interconnection, therefore warranting deferral of the Commission's unbundling requests. In its Mobile Services Order (at p15) the FCC restates what should be

the obvious:

> We conclude that mobile resale service is included within the general category of Mobile Services defined by Section 3(n) [of the Communications Act as amended] and for purposes of regulation under Section 332, since resale of Mobile Service can only exist if there is an underlying licensed service. (emphasis supplied)

As the FCC presently recognizes, resellers, as commercial mobile service providers, are entitled to the same interconnection rights as any other commercial mobile service provider.[4] Moreover, such reciprocal interconnection rights are looked upon as a necessary right and obligation by major local exchange companies such as US WEST, (parent of US WEST Cellular), which stated in its Comments in the FCC's Mobile Services Proceeding:

> Congress has made apparent that a non-discrimination requirement, the obligation to provide interconnection upon reasonable request, and the right to file complaints against mobile service providers are absolutely necessary to protect consumers". **** "Consequently CMS providers must honor reasonable requests for interconnection made by other common carriers-be they providers of mobile services or non-mobile services. Simply stated, there is a reciprocal right and obligation to provide physical connection among all common carriers. (emphasis supplied)

US WEST, November 5, 1993, comments in GN Docket No. 93-252 at 12-13 and 34.

In the Mobile Services Order, the FCC also indicated that it intends to issue a Notice of Inquiry into its present resale policy (the Equal Access Inquiry) to explore the issue of resale of all commercial mobile services, including reseller interconnection rights, but until the conclusion of such inquiry its current policy will remain intact. Mobile Services Order at p.90. "While these issues are pending before us, we will continue our resale policy with respect to cellular CMRS providers." Id. Thus, the FCC's Mobile Services Order does not

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[4]Amended Section 332(c)(1)(iii)(B) provides "Upon reasonable request of any person providing commercial mobile service, the [Federal Communications] Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act."

inhibit wholesale rate unbundling by this Commission as determined in Dec. 92-12-026 and as modified, in part, by Dec.93-05-069 and reiterated in the Interim Decision. Indeed, the policies of both amended Section 332 of the Communications Act and the Mobile Services Order support such unbundling.

> Our national economy is strengthened and the public interest is served to the extent we are successful in promoting and achieving the broadest possible access to wireless networks and services by all telecommunications users *** ... in addition to playing a role in fostering competition, the decisions we make in this order regarding interconnection obligations will promote access to the telecommunications infrastructure. Commercial mobile radio services, by definition, make use of the public switched network; the interconnection policies we establish in this Order ensure that providers of mobile services and their customers receive the benefit of the broadest possible access to the switched network. Mobile Services Order at 11-12.

Moreover, this federal policy is completely consistent with this Commission's Infrastructure Report to the Governor which emphasizes achieving broad access to California's common carrier networks via "required interconnection" and preventing firms from "denying access" to such networks. Id. at 16.

Also contrary to LA Cellular's assertions the FCC has made clear in its Equal Access Inquiry, that it has not preempted the states over interconnection arrangements by commercial mobile service ("CMRS") providers, though it believes it has the authority to do so. Equal Access Inquiry at para 143. Rather, the FCC has merely invited comment on whether it should preempt any state from imposing such obligations. Ibid.[5]

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[5] LA Cellular also contends that the Commission's asymmetric treatment of duopoly carriers vis a vis resellers is contrary to federal law. This is untrue. The FCC's Mobile Services Order (quoting the House/Senate Conference Report) notes that proposed asymmetric treatment of differing wireless providers, dominant cellular duopolists vs. resellers, PCS and SMR providers, is consistent with the new federal law.

> The Conference Report explains: the purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of

5. The Extended Service Area Discussion of The Interim Decision Does Not Warrant Suspension

LA Cellular claims that the EAS discussion at p.88 of the Interim Decision may require duopoly carriers to share roaming revenues with resellers by charging resellers less than the amount paid by the served carrier to the serving carrier, alleging that this is somehow another dramatic change to the current cellular regime after the June 1, 1994 amendment of the Communications Act of 1934. Given the specious nature of the argument that the Commission can not make changes under its general regulatory authority as demonstrated in Section 1, supra, LA Cellular is once again engaging in distortion. P.88 of the Decision makes clear that the treatment of resellers as co-carriers for interconnection, already established in the undisturbed findings of Dec. 92-10-026, requires that they receive a share of the revenues from the re-rating for EAS service and that the terms of the McCaw/AT&T/ CRA Settlement Agreement be adopted as a basis for that sharing. Attachment 8 to CRA's September 21, 1994 Response to Applications for Rehearing contained copies of the pertinent pages from that Settlement Agreement, as adopted, which are straightforward. As that settlement makes clear, the sharing argument established therein is supported by McCaw for all systems in which McCaw has less than a majority interest, as is the case for LA Cellular where McCaw has a 50% interest. Thus, LA

> some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier. Conference Report at 491.

Mobile Services Order at 52, fn.253. Thus, contrary to LA Cellular's assertions, differing treatment of different wireless providers based on relative market power is endorsed by both federal and state law and policy to further competition.

Cellular, to the extent that its current practices may deviate from the settlement can amend its tariff to conform to the settlement provisions, as did McCaw and AT&T for their systems in Northern California and as McCaw previously has done for its Ventura systems whose service area is contiguous with LA Cellular.[6]

6. An Immediate Stay or Suspension of The Commission's Decision Should Be Denied

There exists no valid reason for such a stay or suspension of the Commission's Decision. LA Cellular has proven no irreparable harm. Westcom Long Distance v. Pacific Bell Dec. 94-09-082. Rather, it has proven the opposite, that independent resellers which have relied on the Commission's effective decision will be irreparably harmed if their bonafide intermediate requests are now suspended. Thus, LA Cellular's Petition should be dismissed and denied. Instead, the Commission should modify its Interim Decision to allow resellers to become switch-based through advice letters and require that the duopoly carriers cooperate with their interconnection requests.

Respectfully submitted,

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October 13, 1994

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[6] In addition, LA Cellular must still adhere to Dec. 90-06-025 Fdg of Fact 26, Concls. of Law 3 & 10 (Mimeo at 94 & 104), that cellular rates must be set above cost and offered on a compensatory basis.

ATACHMENT 16

Statement of Representative Edward J. Markey at the Mark-up of Budget Reconciliation, Subtitle C, Licensing Improvement Act of 1993 (May 6, 1993)

F.C.C. Collection #27

Legislative Statements

U.S. House of Representatives
Committee on Energy and Commerce

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

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Statement of Rep. Edward J. Markey
Mark-up of Budget Reconciliation, Subtitle C
Licensing Improvement Act of 1993

Mr. Chairman:

The amendment I offer today marks a turning point in the licensing of communications services in our country. For the first time we are enabling the Federal Communications Commission to use auctions as a means of assigning the radio spectrum. The rationale behind this proposal is that we must reform and improve the current licensing process, which uses lotteries. In short, there has to be a better way to manage a precious federal resource than picking names out of a hat. The proposal before the Committee puts in place a better way, true to the principles underpinning the Communications Act, while at the same time raising revenue, over $7 billion, for the public.

Let me take a few minutes to explain the Amendment to the Committee Print. Section 5203 grants the FCC authority to use spectrum auctions where there are mutually exclusive applications for new licenses and where the spectrum will be used by the license holder to offer services to subscribers for compensation. This section also directs the Commission to select an auction system that promotes: 1) Rapid deployment of new technologies and services so as to benefit all the public, including those in rural areas; 2) availability of new and innovative technologies to the public; 3) recovery for the public a portion of the value of the spectrum, and 4) efficient use of the spectrum.

The bill also directs the FCC to establish rules on auctions that will help enforce many of these objectives. First, the legislation provides concrete assurances that those living in rural areas will enjoy access to advanced technologies as quickly as the rest of the country by including strict performance requirements to ensure prompt delivery of service to rural areas.

Second, the bill directs the Commission to establish alternative payment mechanisms to encourage widespread participation in the auction process. For those Members on the Committee who want to offer dreams to young struggling engineers and innovators, whether in garages in the Bayou or Boston or the backwoods of any state, these provisions give you that ability.

This specific provision makes certain that those who are rich in ideas and low on cash get a chance to enroll in the future. This provision directs the FCC to consider what alternative payment methods should be used, such as installment payments or royalty payments or some combination, so that all Americans have a chance to participate in the communications revolution.

This legislation also enables the FCC to continue to hold out the

promise of a "pioneer's preference" for the truly genius who catapult technology to another level. In fact, some of that genius is what spawned the entire PCS revolution. Under this legislation those truly genuine technology pioneers will be able to make a run for the roses and get a big payoff if they succeed. As we all know, that is a most powerful incentive, and that is why I think it is vital that we continue the overall thrust of the pioneer's preference program.

Regarding how auctions will be conducted, the proposal reflects the experience with lotteries and gives the FCC authority to make sure that bidders are qualified to build and operate a system and hold an FCC license. The bill clamps down on the churning and profiteering that has characterized the lottery system, and ensures it does not repeat itself under an auction system. I also think it is important that we insulate the FCC's procedures from budgetary concerns. There is a provision that will give the FCC a shield from those who seek to tilt communications policy in order to increase revenues.

A fundamental regulatory step that this bill takes is to preserve the core principle of common carriage as we move into a new world of services such as PCS. I have grave concerns that the temptation to put new services under the heading of private carrier is so great that both the FCC and the states would lose their ability to impose the lightest of regulations on these services. The temptation to label everything private is all the more compelling because a recent court of appeals case held the FCC has no flexibility to apply Communications Act requirements. The risk of labeling all services private is that the key principles of nondiscrimination, no alien ownership, and even minimal state regulation would be swept away. This is one area where the FCC simply lacks the authority to make a rational choice, and so the legislation addresses that issue.

The fact that this legislation ensures PCS, the next generation of communications, will be treated as a common carrier is an important win for consumers and for state regulators and for those who seek to carry those core notions of nondiscrimination and common carriage into the future.

The Amendment to the Committee Print enables the FCC to identify in a rulemaking which requirements it finds are not necessary to ensure just and reasonable rates or otherwise in the public interest. This section has been modified to further make certain that the FCC retains the authority to protect consumers and apply regulations in a sensible fashion.

In addressing this issue, however, it is necessary to take a broader view of creating parity among competing services. The legislation proposes that any person providing commercial mobile service, which is broadly defined to include PCS, and enhanced special mobile radio services (ESMRs), and cellular-like services, should all be treated similarly, with the duties, obligations, and benefits of common carrier status. The legislation also proposes that states would not be able to impose rate regulation, but this amendment makes explicit that nothing precludes a state from imposing regulations on terms and conditions of service, which includes such key issues as bundling of equipment and service and other consumer protection activities. Moreover, the intent here is not to disturb the principle that carriers can be obligated to offer services to

resellers at wholesale prices. For the vast majority of states, their ability to regulate in this area would be preserved.

In addition, the authority of the FCC to act on behalf of cellular resellers would not be affected. Significantly, this legislation extends resale requirements to PCS and ESMRs, thereby opening up market opportunities which do not exist today for resellers.

I believe these changes must be seen in the context of the whole bill. This legislation sets up a mechanism so that in the next 12 to 18 months, we will see 3, 4, 5, or 6 new providers of mobile service added to most markets. The result would be a flurry of competition by entities which all have common carriage duties. And the result would be good for consumers by delivering a breadth of new services to the public at competitive prices.

I appreciate that there is some concern that this vision of a competitive world for mobile services may not be fully realized as soon as some contend. I share this concern. That is why, working with a number of Members from the Subcommittee, we have crafted language that ensures that if the promise of competition, as I just outilined does not take hold, then a State can exercise authority to regulate rates. In particular, the bill provides that States can regulate rates if they show that competition has not developed enough to adequately protect consumers from unjust rates. Moreover, the FCC is directed to respond to any State request for authority within 9 months.

Now to turn to the last section of this part of the bill, which states that auction rules shall be issued in 210 days and PCS licenses issued in 270 days. These tight schedules are necessary to realize the revenues that are part of our reconciliation instructions and keep PCS on target.

Unlike the bill considered by the Subcommittee, this amendment contains a new chapter directing the Department of Commerce to identify 200 megahertz of spectrum to be freed up from government use and eligible for assignment by the FCC. This proposal, which is embodied in H.R. 707, sponsored by Chairman Dingell and myself, passed this Committee in February by a unanimous vote, and passed on the floor with only 5 No votes. We are proposing to include this proposal as part of budget reconciliation because that makes certain that there will be spectrum available for the FCC to auction off. Hence, the addition of this proposal makes the budget targets more likely to be met.

In conclusion, let me say that I have appreciated working with Mr. Cooper, Bryant, Boucher, Synar, Schenk, Lehman and our chairman, Mr. Dingell, along with the minority, to come up with a bill that meets some of the valid concerns raised during consideration of this proposal. I urge support for this amendment.

CERTIFICATE OF SERVICE

I, Merri Jo Outland, hereby certify that on this 19th day of October, 1994, copies of the foregoing were mailed postage prepaid to the following:

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